

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF RHODE ISLAND

In Re: John A. McDonough Jr.

Case No. 10-10228  
Chapter 13

MEMORANDUM IN SUPPORT OF MOTION  
FOR RELIEF FROM THE AUTOMATIC STAY

Deutsche Bank National Trust Company, as Trustee, in trust for the Registered Holders of Amerquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2004-R11, holder of the mortgage hereinafter described (together with its predecessors, successors, affiliates, principals, and assigns, "Lender"), in support of its Motion for Relief from the Automatic Stay submits the within Memorandum.

I. FACTUAL BACKGROUND

1. On or about January 21, 2010, John A. McDonough Jr., ("Debtor") commenced the within action under Chapter 13 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Rhode Island.

2. Prior to the commencement of this proceeding, on or about November 10, 2004, Amerquest Mortgage Company extended a loan to Debtor in the original principal amount of \$280,500.00 (the "Loan").

3. The loan is evidenced by a promissory note executed by Debtor ("the note"), together with any and all documents executed in connection with the Loan, (the "Loan Documents").

4. The note is secured by a mortgage (the "Mortgage") executed by Debtor on real property located at 26-28 Arnold Street, Lincoln, RI 02865 (the "Property").

5. Lender is the current holder in due course of the loan documents.

6. There is no other collateral securing the loan documents.

7. The Property is a multi family residential dwelling.

8. Debtor resides in the Property.

9. As of March 24, 2010, there is \$340,242.75 due and owing to Lender pursuant to the Loan Documents, plus any additional interest and miscellaneous charges, attorney's fees, costs and expenses.

10. The total amount of encumbrances on the Property is \$340,242.75.

11. According to Debtors' Schedules, the approximate value of the Property is \$185,000.00.

12. As of April 7, 2010, there is a post-petition payment arrearage due and owing to Lender under the Loan Documents for the February 2010 through and inclusive of April 2010 payments of \$6,086.34 and late charges of \$185.52, for a total post-petition arrearage of \$6,271.86, exclusive of attorney's fees, costs, and expenses incurred in connection with the bankruptcy proceeding.

13. The regular monthly payment due to Lender at this time is \$2,028.78.

14. The next scheduled payment is due to Lender on May 1, 2010.

15. There are no defenses, claims or set-offs available to Debtor that would operate to reduce the indebtedness or any obligation to make payment thereof.

## **II. DISCUSSION**

Lender requests relief from the automatic stay to permit it to exercise its various non-bankruptcy rights and remedies including, without limitation, taking possession of the Property, obtaining a deed-in-lieu of foreclosure and/or foreclosing the mortgage, seeking to obtain, if necessary, eviction of Debtor and any occupant from the Property, and any other relief this Court deems just and proper. Lender submits that it is entitled to said relief pursuant to 11 U.S.C. §362(d)(1).

Pursuant to 11 U.S.C. §362(d)(1), the Court shall grant relief from the automatic stay for cause. Lender respectfully submits that the cause warranting relief from the Automatic stay is Debtor's failure to make payments to Lender resulting in a post-petition payment arrearage under the Loan Documents.

**WHEREFORE**, Lender prays that the automatic stay existing pursuant to 11 U.S.C. 362(d) be modified to permit Lender and its successors and/or assigns to exercise its rights pursuant to the Note and the Mortgage, including the power of sale with respect to the Property; that, if the requested relief

from stay is unopposed, it be granted a waiver of the fourteen day stay imposed by Fed. R. Bankr. P. 4001 (a)(3); and that Lender and its successors and/or assigns have such other and further relief as is just, including the right to evict Debtor from the Property should Lender be the successful bidder at foreclosure.

Deutsche Bank National Trust Company, as Trustee,  
in trust for the Registered Holders of Ameriquest  
Mortgage Securities Inc., Asset-Backed Pass-Through  
Certificates, Series 2004-R11  
By its Attorneys,

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Dated: April 7, 2010